



AAA Mediation.org™

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New York, New York



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Current Employer-Title Eiseman ADR LLC

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Professional Summary Serves as a full-time independent arbitrator and mediator after establishing Eiseman ADR LLC on January 1, 2020 following more than three decades representing clients in litigating, arbitrating and mediating complex business disputes. Specializes in commercial disputes, including the construction and real estate industries, involving real estate developers, private and institutional owners, lenders, construction managers, contractors, subcontractors, suppliers, sureties, design professionals, insurance carriers and manufacturers.

Profession Attorney, Full-time Independent Neutral Arbitrator and Mediator

Work History Eiseman ADR LLC, 2020 – Present; Managing Partner/Partner/Associate, Goetz Fitzpatrick LLP, 1981 – 2019.

Experience Partner for more than 30 years at one of the premier construction and real estate litigation law firms in the tri-state area. Adjunct Professor teaching Legal Principles and Practices and Negotiation and Dispute Resolution in Masters Program, Real Estate and Construction, New York University, 1991 to 2021; New York University Schack Institute of Real Estate/Construction Advisory Board Member; Panel of Mediators, American Arbitration Association; Construction Master Mediator Panel, American Arbitration Association; Member, Arbitrator National Advisory Committee, American Arbitration Association, 2015-2016; Adjunct Professor teaching "Construction Law" at Cardozo School of Law, 2018 to 2022.

Litigated and arbitrated complex construction disputes in NY, NJ, MA and federal courts for numerous clients, including owners, construction managers, general contractors, subcontractors, sureties and manufacturers. Negotiated multi-million dollar contracts on behalf of private and institutional developers, owners, design professionals, construction managers, general contractors, subcontractors and suppliers. Counseled clients on day-to-day issues arising during construction projects including contract, payment and insurance. Extensive litigation and drafting experience in

construction contracts and design services agreements and under the UCC relating to product warranties and disclaimers. Sat as sole arbitrator or Panel Chair in international arbitrations including, most recently, disputes (i) between an Israeli company and a New York developer over the alleged breach of a partnership agreement to construct a high-rise residential building in Manhattan; (ii) a Turkish manufacturer and a U.S. distributor involving performance/payment issues pursuant to a distributorship agreement; (iii) between a U.S. contractor and foreign supplier over the performance of AC traction motors for locomotives; and (iv) a gc and a sub in an ICC arbitration involving multi-million dollar delay claims.

Commercial: Litigated and arbitrated complex commercial disputes for numerous corporate clients involving breach of contract and payment disputes, conversion, fraud, tortious interference with contract, breach of fiduciary duty and shareholder disputes. Negotiated contracts and commercial leases on multi-million dollar projects on behalf of private and institutional developers, owners, retailers, landlords and tenants. Counseled corporate clients on day-to-day matters, including contract and real estate issues, real estate tax disputes, commercial and residential leases, joint ventures, shareholder and employment disputes and insurance matters.

Representative cases include disputes concerning a container facility and port, a sewerage authority, new building construction for schools, colleges/universities, commercial and residential building envelopes, excavation and underpinning/foundation work, masonry work, drywall work, painting work, concrete work, electrical work, curtainwall and window work, roofing work, heavy construction work, HVAC work, plumbing work, condo and coop renovations and high-end office interior renovations. Extensive experience representing clients in more than 200 complex arbitrations and mediations involving disputes over payment, employment agreements, shareholder disputes, asset purchase agreements, construction contracts, architectural service and surety agreements, wrongful termination, construction and design defects, insurance coverage issues, roofing systems and roofing warranties, fraud, client billing, high-end residential and commercial construction, water damage claims involving building envelopes, foundations, masonry, concrete, wall systems, roof assemblies, EIFS applications, reservoirs and floating covers, environmental issues and coverage disputes involving insurance carriers and their insureds.

Mediator Experience

Member of the AAA Large Complex Case Panel. Member of the AAA Master Mediator Panel for Construction. Mediated scores of cases involving, among other things, construction and design issues, commercial contracts, real estate, leases, condos, coops, high-end private residences, corporate and shareholder disputes and class action payment disputes. Served as the sole neutral selected by a hospital and a nursing home facility on Manhattan's Upper West Side and various community groups to work out a win-win protocol to resolve disputes involving the construction of two new hospital buildings and the effect it will have on those living in the adjacent residential neighborhoods. Served as one of two members of a Dispute Review Board selected by both the developer and builder of a new high-rise hotel in Manhattan. Pre-designated as mediator (i) by the developer and construction manager in their general contract for the construction of a 63-story, 94-unit residential tower in midtown Manhattan and (ii) by the general contractor and subcontractor in the multi-year dredging and cleanup of a major New York waterway. Recent successful mediations include (i) a payment/performance dispute between a City and its construction manager; (ii) a dispute between the developer of a commercial project and its general contractor over termination and performance issues; (iii) a dispute between the owner of a gut-renovated brownstone and its architect; (iv) a dispute between a condominium board and its architect; (v) a payment/scope of work dispute between the owner of a newly constructed, high-end residence and its general contractor; (vi) a prevailing wage dispute; (vii) a multi-million dollar extra work/delay damage dispute between a municipality and its prime contractor; (viii) a dispute between a commercial tenant and its general contractor over the sufficiency of the general contractor's work; (ix) a payment/extra work dispute among parties to a public works project; (x) a payment/performance dispute between the owner of a mixed-use building and its contractor involving remediation work to the building's façade; (xi) New York Labor Law and FLSA wage dispute claims between an employer and employee; (xii) various disputes between the developer of a 283-unit hotel project and its contractor; (xiii) disputes between a school district and its contractor involving the installation of windows at several school buildings; (xiv) contract balance, extra work, design and delay disputes between the owner of a high-end shopping center and its design team; (xv) \$24 million dispute between a European manufacturer and a United States-based company over the performance of supplied equipment and the sufficiency of the company's plant operations; (xvi) a multi-million dollar dispute among the public owner, its engineer and prime contractor over the performance, design and payment issues concerning the installation of sewer lines; (xvii) a multi-

million dollar payment and performance dispute between a non-private entity and its contractor regarding the construction of two HPD-financed affordable living residences; and (xviii) a multi-million dollar dispute between an owner and a prime contractor over myriad issues relating to the ground up construction of new residential building in Brooklyn.

Representative Issues Handled as a Mediator

Construction disputes involving private and public owners, non-profit entities, developers, construction managers, contractors, subcontractors, suppliers, design professionals, sureties, schools, colleges and universities. Disputed issues included: contract interpretation, nonpayment, allegedly defective work and alleged design errors, building envelope, underpinning/foundation, HVAC, concrete, drywall, steel, curtainwall, elevator, roof and waterproofing issues, submittal issues, change orders and additional work, retainage, substantial and final completion, alleged wrongful termination, the proper scope of work, responsibility for subsurface conditions, enforceability of no damage for delay clauses, notice provisions, statutes of limitations, force majeure, the scope and enforceability of written waivers/releases, scheduling, substantial and final completion, consequential damages claims, liquidated damage claims, prevailing party clauses. plus various insurance coverage issues. Commercial and real estate disputes involving shopping centers, condos, coops, high-end residential construction, adjoining landowners, real estate taxes and partnership/shareholder/accounting issues.

References: Joseph Asselta, ForchelliLaw.com; Jarrett M. Behar, Certilman Balin , jbehar@certilmanbalin.com; Sarah Biser, Fox Rothschild; Bill P. Chimos, Zetlin & DeChiara; Dennis A. Estis, Greenbaum Rowe; Louis Biancone, lbiancone@bianconeandwilinsky.com; Brian T. Belowich, belowich@belowichwalsh.com; Matthew T. Worner; mtw@wornlaw.com; Thomas Welby, Robert Bannon, Thomas Tripodianos, Welby, Brady & Greenblatt, LLP; Michael F. Kuzow, michaelkuzow@westerlaw.com; Gregory Chertoff, Christopher Kinzel, Kevin J. O'Connor, Mark Rosen, Peckar & Abramson, P.C; Anthony Galano, III, Ellenoff, Grossman, agalano@egsllp.com; Cari Lewis, Alonso, Andalkar & Facher, PC; Fred Cohen, Walter Saurack, Ken Lazaruk, Duane Morris; Daniel Weinberger, Gibbons; Robert MacPherson, rmacpherson@cockinoswlaw.com; David Pfeffer, DPfeffer@tarterkrinsky.com; Andrew J. Carlowicz, Jr., acarlowicz@hoaglandlongo.com; Robert M. Jacobs, rjacobs@winnebanta.com; Timothy J. DeHaut, Giordano Halleran, TDeHaut@ghclaw.com; Randy J. Heller, Gallet Dreyer, rjh@gdbl.com; Stephen E. Ray, ray@steinraylaw.com; Brian G.Lustbader, BGLustbader@Venable.com; Charles J. Stoia, Porzio, Bromberg; Lisa M. Fontoura, JLL, lisa.fontoura@am.jll.com; Dennis C. Cavanaugh, Robinson & Cole; Howard Grun, Kaufman Friedman; Mark Walfish, mwalfish@katskykorins.com; Steven Torres and Lee D. Apotheker, West Group Law; Scott Hollander, Steven S. Katz, Chiesa Shahinian; G. Christian Roux, Mike H. Shanlever, Alston & Bird LLP; Christian H. Hendrickson, Hendrickson@shermanhoward; Jonathan Koles, jkoles@kbblegal.com; James P. Lisovicz, Kinney Lisovicz Reilly & Wolff, PC, jim.lisovicz@klrw; Erin O'Leary, Erin.OLeary@lewisbrisbois.com; Ken Roberts, Ken@krobertslawoffice.com; Mara B. Levin, MLevin@BlankRome.com; Lawrence Fechner, wrencefechnerlaw@gmail.com; Jack Spinella, jspinella@spinellalawgroup.com; Keith Stevens, L'Abbate, Balkin; John Re, Kurzman Eisenbert; Robert Lillienstein, Moses and Singer; Daniel Gildin, Kaufman Gildin & Robbins LLP; Hunter Carter, Arent Fox; Arthur Semetis, asemetis@semetislaw.com; Mark Kornfeld, mark.kornfeld@bipc.com; Andrew Richards, Elizabeth Marchionni, Kaufman Dolowich; Joshua Spitalnik, josh@spitalnicklaw.com; Jason Samuels, Polsinelli; Hayden Coleman, Dechert; Michael Davi, Con Ed; William Groscup, Watt Tieder; Michael S.Elvin, Barack Ferrazzano; Lee Tesser, ltesser@tesseract.com; Deanna Koestel, dkoestel@pashmanstein.com; Shawn Farrell, sfarrell@cohensglias.com; Barry Temkin, Mound Cotton; Sunny Sparano, Marshall Dennehy; Adam Adrignolo, McElroy Deutsch; Billy Davis, Andrew Myers; Greg Vitali Vitali@lindabury.com; Additional references available upon request.

Mediator Style & Process Preferences

To be effective, a mediator must facilitate a negotiation on the merits rather than encourage a contest of wills focused on what each side says it will and will not do. It is important to flush-out the interest of the parties and, whenever possible, to explore creative solutions, particularly because a failed mediation usually leads to a litigation or arbitration where a result will be imposed upon the parties. Preparations by both the parties and mediator is essential. I require the parties to submit pre-hearing submissions to enable me to learn as much as possible about the dispute prior to the formal mediation session. It is also critical that those attending the mediation are familiar with the issues and possess full settlement authority, including attendance by representatives of any insurance companies which may be involved. Although I have no objection to attorney participation in the form of an opening statement/evaluation during a joint session at the commencement of the mediation, thereafter I encourage the parties themselves to take an active role. Unless the circumstances dictate that the best result is for both parties to walk away from the mediation without

an agreement, an experienced mediator does whatever he or she can to keep the parties moving closer together. Sometimes this requires the mediator to act more as a facilitator and keep the parties negotiating; other times it requires the mediator to be more pro-active by offering opinions on the strengths and weaknesses of the positions and by furnishing a cost-benefit and/or risk-reward analysis with respect to reaching a voluntary settlement as opposed to proceeding to litigation or arbitration. The best mediators understand the importance of not giving up-even when one or both of the parties appear resigned to a failed mediation.

Education

St. John's University (JD-1981); The George Washington University (BA, Journalism, Political Science-1978).

Professional Licenses

Admitted to the Bar: New York (1982), New Jersey (1981); U.S. District Court: Southern (1982) and Eastern (1982) Districts of New York, District of New Jersey (1981); U.S. Court of Appeals, Second Circuit (1984); U.S. Supreme Court (1985).

Professional Associations

The College of Commercial Arbitrators, President, 2022-23, (CCA Board of Directors and/or Executive Board Member, 2016-2022); Fellow, Chartered Institute of Arbitrators; Member, National Academy of Distinguished Neutrals New York and New Jersey; Member of the Mediation Panel of the U.S. District Court for the Southern District of New York; American Bar Association (Past Chair, Committee on Arbitration, Sections of Litigation and Construction) (Member of Dispute Resolution Section and Forum on Construction Law); New York State Bar Association; New Jersey State Bar Association.

Recent Publications & Speaking Engagements

PUBLICATIONS: "Debunking Misperceptions: The Upsides of Commercial Arbitration," ABA Journal, Litigation, Summer, 2021; "Wait, What Happened? Recent Developments in Commercial Arbitration," College of Commercial Arbitrators ("CCA"), January 2021; "Can a Commercial Arbitrator Demand a Virtual Hearing?", The National Law Journal, May 20, 2020; "Sound Advice Podcast: Selecting the Right Commercial Arbitrator," ABA Section of Litigation website, January 2020; GUIDE TO BEST PRACTICES IN COMMERCIAL ARBITRATION, College of Commercial Arbitrators, 4th Ed., 2018, Co-Author of Chapters on "Arbitrator Fees and Expenses" and "Unique Issues in Construction Arbitration"; Supreme Court Ruling Will Deter Construction Workers' Claims for Unpaid Wages," Op-Ed Piece, Crain's New York Business, June 19, 2018; Thomson Reuters Practical Law, Author of the Overview on NY Construction Law, 2016 to 2020; "Third-Party Funding of Lawsuits Permeates Legal Landscape," Opinion Piece/Column, NYLJ, April 13, 2018; Co-Author, ABA 2017 A201 Desk Book, Chapter on "Claims and Disputes"; "Proposed Legislation Undermines Business to Business Arbitration," NYLJ, February 8, 2016; "Stiffing the Arbitrators: The Problem of Nonpayment in Commercial Arbitration," HARVARD NEGOTIATION LAW REVIEW, April 2015; "A Tale of Two Lawyers: How Arbitrators and Advocates Can Avoid the Dangerous Convergence of Arbitration and Litigation," Cardozo Law School, JOURNAL OF CONFLICT RESOLUTION, Volume 14, Number 3, Spring 2013; Disputes," NYLJ, April 20, 2010.

RECENT SPEAKING ENGAGEMENTS: : "Game Changers: Takeaways in Construction Dispute Resolution," AAA Construction Conference, Santa Monica, CA, June 8, 2023; ABA Arbitration Institute: "Arbitrating Construction Cases," NYC, March 10, 2023 and "What Commercial Arbitrators Need to Know," Chicago, June 2, 2022; "Discovery: Best Practices for Construction Arbitration," NYS Bar Association, NYC, April, 20, 2023; "What Commercial Arbitrators Need to Know," ABA Arbitration Institute, Chicago, June 2, 2022; ""Convincing Your Arbitrators to Authorize the Discovery You Really Need," CCA Best Practices webinar, May 4, 2022; "Post-Pandemic Arbitration: Old School or New Age?," ABA Section on Dispute Resolution's Annual Meeting, April 2021; "Best Practices Roundtable on Virtual Hearings," AAA webinar, November 2020; "Non-signatories to Arbitration Agreements," CCA Annual Meeting, October 2020; "How to Effectively Deal With the 300 Change Order Dispute: Who Controls the Process?," AAA/ICDR online presentation, October 2020; "What Counsel and Witnesses Do that Drive Arbitrators Nuts," Construction Super Conference, Los Angeles, December 2019; "A Delicate Balance: Arbitrating Your Client's Complex Commercial Case Without Sacrificing Speed, Efficiency and Cost-Savings," ABA Section of Litigation Conference, NYC, May 3, 2019; "How to Save the Parties from Themselves in Construction Arbitrations," ABA SDR Annual Meeting, Minneapolis, April 11, 2019; "Don't Forget the Damages-You Can't Win on Entitlement Alone," AAA's Construction Conference, Miami, April 4, 2019; "Handling Multi-Claim Construction Disputes: Practical Tips," ABA Section on Dispute Resolution Spring Conference, Washington D.C., April 6, 2018; "Streamlining Your Arbitration: How to Avoid Reliving that Construction Project Brick by Brick,"

Construction Super Conference, December 5, 2017, Las Vegas; “Challenges to the Authority of an Arbitrator,” NYS Bar Association’s Dispute Resolution Section 2017 Fall Meeting, NYC, October 26, 2017; “Navigating the Unique Aspects of Construction Arbitration,” New York Law School, NYC, June 22, 2017; “Setting the Stage for a Successful Mediation,” St. John’s School of Law, Queens, N.Y., February 25, 2017.

Mediation Rate	\$625 Per Hour
Languages	English
Citizenship	United States of America
Locale	New York, NY

The AAA’s Rules provide the AAA with the authority to administer a mediation including, mediator appointment, general oversight and billing. Accordingly, mediations that proceed without AAA administration are not considered AAA mediations, even when the parties select an mediator who is on the AAA’s Roster.

The information contained in this resume has been supplied solely by the individual mediator and may, or may not, be a complete recitation of their experience. The AAA assumes no responsibility for the content, completeness, accuracy, or reliability of the information contained in a mediator’s resume. If you have any questions about a mediator’s experience or background, you are encouraged to contact your case manager.

Mediators on the AAA Roster are not employees or agents of the AAA.